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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 ADAM GHADIRI,

11 Plaintiff,

12 vs.

13 FAT FISH, a business entity; FAT FISH,
14 INC., a corporation; SANG S TR, a trust;
15 SANDRA S NAM TR, a trust,

16 Defendants

Case No.:

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR VIOLATIONS
OF AMERICANS WITH DISABILITIES
ACT; CALIFORNIA UNRUH CIVIL
RIGHTS ACT; GENERAL NEGLIGENCE**

17 Plaintiff ADAM GHADIRI ("Plaintiff") complains of defendants FAT FISH, a business
18 entity; FAT FISH, INC., a corporation; SANG S TR, a trust; SANDRA S NAM TR, a trust, (all
19 defendants collectively referenced herein as "Defendants") as follows.

20 **PARTIES**

21 1. Plaintiff is a California resident with physical disabilities. He suffers from severe
22 arthritis in his knees and back. He has been diagnosed with spinal stenosis and myelopathy
23 (nerve damage). He has difficulty walking and uses a cane and a wheelchair for long distance
24 mobility. He suffers daily with pain that requires him to take pain medication. He has a
25 California driver's license and drives for business activities and for his household errands.
26 Plaintiff has a California handicap parking placard that is prominently displayed in his vehicle.

27 2. Defendant FAT FISH is a restaurant and is located at 14701 E. 14th St., San
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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1 Leandro, CA, 94578.

2 3. Plaintiff is informed and believes, and on that basis, alleges that defendant FAT
3 FISH, INC., a corporation, is the business license holders of FAT FISH.

4 4. Plaintiff is informed and believes and on that basis alleges that defendants SANG
5 S TR, a trust, and SANDRA S NAM TR, a trust, are the owners of the premises, building,
6 and/or the land located at 14701 E. 14th St., San Leandro, CA, 94578.

7 5. Plaintiff does not know the true names of all possible defendants, their business
8 capacities, their ownership connection to the property and the business, or their relative
9 responsibilities in causing the access violations herein complained of, and plaintiff alleges a
10 joint venture and common enterprise by all defendants. Plaintiff is informed and believes that
11 each of the defendants is responsible in some capacity for the events and damages alleged or is a
12 necessary party for obtaining appropriate relief. Plaintiff shall seek leave to amend the
13 complaint to name and add other defendants when their identities are ascertained.

14 **JURISDICTION & VENUE**

15 6. This court has subject matter jurisdiction over this action pursuant to 28 U.S.
16 Code § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of
17 1990, 42 U.S. Code § 12101, et seq.

18 7. Pursuant to pendant jurisdiction, an attendant and related cause of action arising
19 from the same nucleus of transactions is brought under California's Unruh Civil Rights Act
20 (Civil Code §§51-52) which expressly incorporates the Americans with Disabilities Act.

21 8. Venue is proper in this court pursuant to 28 U.S. Code § 1391(b) and is founded
22 on the fact that the real property which is the subject of this action is located in this district and
23 Plaintiff's causes of action arose in the district.

24 **FACTUAL ALLEGATIONS**

25 9. Plaintiff went to FAT FISH in or about March 2019. When entering the parking
26 lot, Plaintiff noticed there was a handicap parking space but the paint was faded to the point that
27 it was barely visible, there was no handicap parking sign, and no van access. The condition of
28

1 the parking lot, therefore, denied Plaintiff, as a disabled person, full and equal access to the
2 business and caused him difficulty and frustration in his attempts to consummate business there.

3 10. Failing to provide full and properly maintained access to handicap parking area
4 amounts to a violation of the operative American with Disabilities Act Guidelines (“ADAAG”).
5 The lack of a handicap parking space violates the ADAAG. Additionally, the lack of a handicap
6 parking space shows neglect and demonstrates Defendants are not implementing any policy of
7 upkeep so as to give disabled persons practical access to the given premises and services equal
8 to the access enjoyed by non-disabled persons; this amounts to illegal discrimination against
9 disabled persons who wish to patronize FAT FISH as a place of public accommodation.

10 11. Plaintiff personally encountered violations of applicable legal obligations and
11 standards that prevented him from full and equal access to convenient, safe, adequate, and
12 appropriate parking facilities. Plaintiff would like to patronize this establishment again but
13 cannot do so until the Defendants remove these barriers or obstacles to proper access equal for
14 everyone and correct all violations of law. Plaintiff seeks to have all barriers and obstacles
15 related to disabled persons remedied, whichever may exist, regardless of whether he personally
16 encountered any of them. See *Doran v. 7-11*, 506 F3d 1191 (9th Cir 2007), holding that once a
17 handicapped plaintiff encounters one barrier to equal access at a given site, he can sue to have
18 all other barriers relating to his disability removed even if he did not personally encounter those
19 barriers on the given occasion. Additionally, Plaintiff believes and alleges that Defendants’
20 failure to remedy and remove the specific barriers (difficulties) to access for disabled persons,
21 as mentioned in the Paragraphs above, is intentional because (a) these particular barriers are
22 obvious, and (b) Defendants, jointly and severally, exercised full control and dominion over the
23 conditions on the land and at the business at this particular location, and therefore the lack of
24 and barriers to full equal access for disabled persons was not mere “accidental oversight”, given
25 that had Defendants intended any other situation they had the means and ability to make the
26 land and business fully compliant with the legal requirements mandated by the laws, as set forth
27 in the causes of action below.
28

**FIRST CAUSE OF ACTION
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990
(Against All Defendants (42 U.S. Code § 12101, et seq.))**

12. Plaintiff realleges and incorporates by reference the allegations contained in all prior paragraphs of this complaint.

13. Defendants own, operate, lease from, or lease to a place of public accommodation commonly known as FAT FISH. Under the ADA, it is an act of discrimination for any person(s) who owns, leases (or leases to), or operates a place of public accommodation to deny to disabled persons the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. 42 U.S. Code § 12182(a). U.S. Code § 12182(b) defines discrimination, inter alia, as follows:

a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations. 42 U.S. Code § 12182(b)(2)(A)(ii).

b. A failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, ...where such removal is readily achievable. See 42 U.S. Code § 12182(b)(2)(A)(iv). Barriers can be defined by reference to the ADAAG, found at 28 Code Federal Regulations, Part 36, Appendix D.

c. A failure to design and construct facilities for first occupancy, if later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter. 42 U.S. Code § 12183(a)(1).

14. Defendants are persons or business entities that own, operate, or lease a place of

1 public accommodation. As such, Defendants are required to avoid discrimination and have
 2 specific duties to (1) ensure that all construction, alteration, or modification is barrier-free as to
 3 disabled persons and complies with the currently operative ADAAG; and/or (2) remove all
 4 existing barriers to disabled persons where such removal is readily achievable, and/or (3) to
 5 provide alternatives to barrier removal for the benefit of the disabled persons so that they do
 6 enjoy equal access at places of public accommodation. Defendants have failed to meet these
 7 obligations. Consequently, Plaintiff is entitled to court-ordered relief against the defendants, to
 8 make sure that within six months from the beginning of this action the defendants render their
 9 public accommodation premises fully compliant with the ADA.

10 **SECOND CAUSE OF ACTION**
 11 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**
 12 **(Against All Defendants (Cal Civil Code § 51-53))**

13 15. Plaintiff realleges and incorporates by reference the allegations contained in all
 14 prior paragraphs of this complaint.

15 16. Because Defendants violated Plaintiff's rights under the ADA, they also violated
 16 the Unruh Civil Rights Act and are liable for damages. Civil Code § 51(f), 52(a).

17 17. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 18 discomfort, and embarrassment for the plaintiff, the defendants are also responsible for statutory
 19 damages, i.e., civil penalties. See Civil Code § 51(f), 52(a).

20 **THIRD CAUSE OF ACTION**
 21 **GENERAL NEGLIGENCE**
 22 **(Against All Defendants)**

23 18. Plaintiff realleges and incorporates by reference the allegations contained in all
 24 prior paragraphs of this complaint.

25 19. Defendants owe a duty of care to Plaintiff, arising under the ADA and Unruh
 26 Civil Rights Act, to provide safe, convenient, and accessible facilities. Their violations of this
 27 duty, as alleged in the preceding paragraphs of this complaint, has caused inconvenience, injury,
 28 and damage to Plaintiff in the amount of at least minimal amounts of damages allowed by
 applicable statutes, the exact amount to be determined at the trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this court award damages and provide relief against all named Defendants, jointly and severally, as follows:

1. For mandatory injunctive relief, compelling Defendants jointly and severally to comply with the Americans with Disability Act and the California Unruh Civil Rights Act by fully correcting all violations of the requirements of these laws within six months of being served with Summons and Complaint in this action, and that said Defendants be required to report to Plaintiff and to the Court of the actual status of the correction of the defects charged in this Complaint on the next day after the six month period has expired.

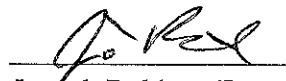
2. For damages under the Americans with Disability Act and/or the Unruh Civil Rights Act where applicable, which statutes provide for actual damages and a statutory minimum of \$4,000. If the Plaintiff cannot recover under both Unruh and ADA, simultaneously, an election will be made prior to or at trial, at an appropriate stage in these legal proceedings.

3. For damages for general negligence, in the amount of at least minimal amounts of damages allowed by applicable statutes, or alternatively \$4,000, the exact amount to be determined at trial.

4. For reasonable litigation expenses and costs of suit pursuant to 42 U.S. Code § 12205, Cal Civil Code § 52, and Cal Code of Civil Procedure § 1021.5. For reasonable attorneys' fees pursuant to 42 U.S. Code § 12205, Cal Civil Code § 52, and Cal Code of Civil Procedure § 1021.5, in the amount of \$4,000.

5. For such other and further relief as the court deems just and proper.

Dated: 3/13/2020


Joseph Bakhos, Esq.
Attorney for Plaintiff